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Protection of human rights and fundamental freedoms while countering terrorism

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, submitted in accordance with General Assembly resolution 62/159 and Human Rights Council resolution 6/28.

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Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Summary

Following the introduction, section II of the report provides a summary of the activities of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism from 1 January to 31 July 2009, including an official visit of the Special Rapporteur to Egypt in April 2009. Consistent with the mandate of the Special Rapporteur as defined by the Human Rights Council, section III offers an analysis of counter-terrorism measures from a gender perspective. This report expands upon earlier reports of the Special Rapporteur to provide a comprehensive overview of the frequency and nature of gender-based human rights abuses in counter-terrorism measures and to explore the complex relationship between gender equality and countering terrorism. While many of the measures discussed in the report relate to the human rights of women, gender is not synonymous with women, and, instead, encompasses the social constructions that underlie how women's and men's roles, functions and responsibilities, including in relation to sexual orientation and gender identity, are understood. The report therefore discusses, besides the human rights of women, the gendered impact of counter-terrorism measures on men and persons of diverse sexual orientations and gender identities, and addresses how gender intersects with other prohibited grounds of discrimination, such as race and religion.

The report identifies the ways in which those subject to gender-based abuse are often caught between targeting by terrorist groups and the State's counter-terrorism measures that may fail to prevent, investigate, prosecute or punish these acts and perpetrate new human rights violations with impunity. These violations are amplified through war rhetoric and increased militarization in countering terrorism, both of which marginalize those who challenge or fall outside the boundaries of predetermined gender roles and involve situations of armed conflict and humanitarian crisis in which gender-based violence and gendered economic, social and cultural rights violations abound.

The report also addresses the ways in which overly broad counter-terrorism measures have unduly penalized individuals on the basis of gender, including, for example, the activities of women's human rights defenders. Counter-terrorism measures have also had other significant gendered collateral effects that are often neither acknowledged nor compensated. This includes, for example, significant adverse impacts on female family members of those subject to disappearances and extraordinary rendition, and the use of collective sanctions against female relatives of suspected terrorists by which women not suspected of terrorism-related offences are unlawfully detained and ill-treated to either gain information about male family members or to compel male terrorism suspects to provide information or confessions.

The report further discusses the relationship between promoting gender equality and countering terrorism, noting that while Governments are required to ensure the right to gender equality and non-discrimination as ends in themselves, a gender perspective is also integral to combating the conditions conducive to the spread of terrorism as identified in the United Nations Global Counter-Terrorism Strategy adopted by the General Assembly in its resolution 60/288. The report then draws attention to the fact that contrary to these international human rights obligations to ensure equality, some Governments have used the human rights of women and lesbian, gay, bisexual, transgender and intersex individuals as a bartering tool to appease terrorist or extremist groups in ways that have furthered unequal gender relations and subjected such persons to increased violence.

Building on previous observations of the Special Rapporteur concerning the use of profiling in counter-terrorism measures, the report also identifies the ways in which counter-terrorism measures use gender stereotypes as a proxy for profiling on the basis of race, national or ethnic origin or religion, marginalizing individuals from targeted communities and subjecting them to greater discrimination and harassment by both private and public actors. Additionally, the report outlines the significant gender-based economic, social and cultural rights violations resulting from targeted sanctions and control orders, as well as the ways in which restrictive terrorism financing laws undermine the ability of charities to provide relief for gender-based violations, particularly those that occur in situations of humanitarian crisis.

The report next draws attention to the use of gender-specific forms of interrogation techniques in the name of countering terrorism, including sexual violence and other techniques aimed at emasculating male detainees. Turning to women's role in both terrorism and counter-terrorism measures, the report notes that, while women are victims of terrorism and counter-terrorism measures, they may also be volitional actors and should be considered as key stakeholders in counter-terrorism measures. The report also discusses the specific ways in which restrictive immigration controls and asylum procedures disproportionately affect women and transgender asylum-seekers, refugees and immigrants, noting particularly that the identification of a link between anti-trafficking and counter-terrorism measures has been to the detriment of the human rights of trafficked persons, including women.

The conclusions and recommendations of the report are contained in section IV, which includes several recommendations addressed to States and specific recommendations addressed to various organs and bodies of the United Nations.

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I. Introduction

1. The present report is the fifth submitted to the General Assembly by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, pursuant to Human Rights Council resolution 6/28 and General Assembly resolution 62/159. It highlights activities from 1 January to 31 July 2009, including an official visit of the Special Rapporteur to Egypt in April 2009. The main thematic focus of this report is the examination of counter-terrorism measures from a gender perspective.

2. In addition to his latest report to the General Assembly,[1] the Special Rapporteur draws attention to his main report[2] and the addenda[3] considered at the tenth session of the Human Rights Council in March 2009. The main report summarized the activities of the Special Rapporteur in 2008 and focused on the thematic issue of the role of intelligence agencies and their oversight in the fight against terrorism. The addenda contained a communications report and a report on the official mission to Spain.

3. Regarding future country visits, the Government of Tunisia has indicated that an official visit could take place in the second part of December 2009, but has not yet confirmed the exact dates of the mission. The Special Rapporteur also welcomes invitations extended to him by the Governments of Chile and Peru, and he has communicated his interest in conducting an official visit to these two countries in May 2010.

II. Activities related to the Special Rapporteur

4. On 13 January 2009 the Special Rapporteur was represented in a strategic round table on creating funding to protect human rights in the context of European Union counter-terrorism measures in Brussels.

5. On 20 January 2009 the Special Rapporteur met with the Minister of Justice and officials of the Ministry of Justice in Zagreb, to discuss issues within the context of his mandate, including further cooperation with the Security Council Counter-Terrorism Committee.

6. On 31 January and 26 and 27 May 2009 the Special Rapporteur participated in meetings of the research project Detection Technologies, Counter-Terrorism Ethics and Human Rights (DETECTER), held in Birmingham, England.

7. On 2 March the Special Rapporteur participated in a teleconference meeting with the Chair of the Counter-Terrorism Implementation Task Force and other members in advance of a Task Force briefing to the General Assembly on 3 March. One of the activities highlighted under the Task Force working group on protecting human rights while countering terrorism was the expert meeting on international aviation law, chaired by the Special Rapporteur in New York, on 22 October 2008.

8. On 9 and 10 March 2009 the Special Rapporteur presented his reports to the thirteenth session of the Human Rights Council. He met with the Permanent

[1] A/63/223.
[2] A/HRC/10/3.
[3] A/HRC/10/3/Add.1 and Add.2.

Missions of Chile, Croatia, Egypt, Peru, Philippines, Spain and Tunisia. He also participated in two parallel events, on the themes "Intelligence and counter-terrorism: time for accountability", organized by the International Commission of Jurists, and "Secret detentions — strategies to end this practice", which launched a global study on the practice of secret detentions undertaken jointly with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances.

9. On 20 and 21 March 2009 the Special Rapporteur convened an expert seminar in New York on the theme "Gender, national security and counter-terrorism", hosted by the Centre for Human Rights and Global Justice at New York University School of Law and sponsored by the Åbo Akademi Institute for Human Rights in Turku, Finland.

10. On 25 and 26 March 2009 the Special Rapporteur was in Geneva and met with the Permanent Missions of the Republic of Macedonia, Romania, the United Kingdom of Great Britain and Northern Ireland and the United States of America to further engage and discuss his thematic report to the Human Rights Council at its tenth session on the role of intelligence agencies and their oversight in the fight against terrorism.

11. On 17 April 2009 the Special Rapporteur commenced an official visit to Egypt at the invitation of the Government. From 17 to 21 April the Special Rapporteur engaged with officials, experts and civil society regarding a draft counter-terrorism law that is intended to replace the state of emergency, scheduled to end on 28 May 2010. The Special Rapporteur has communicated to the Government his interest in completing the mission with a second visit in order to undertake some practical activities, within the context of his mandate, including visiting places of detention in accordance with the terms of reference for fact-finding missions by special rapporteurs[4] for the purpose of interviewing security detainees or persons awaiting prosecution, charged with, or convicted of, terrorism offences, and to observe legal proceedings in cases related to terrorism. In May 2009, the Special Rapporteur sent a letter to the Government with a number of follow-up questions, and he hopes to receive a reply so that this information can be taken into account. The mission report will be presented to the Human Rights Council at its thirteenth session in March 2010.

12. On 30 April 2009 the Special Rapporteur was in Geneva and had informal consultations with relevant stakeholders to discuss cooperation on a compilation of good practices on legal and institutional frameworks and measures that ensure respect for human rights by intelligence agencies while countering terrorism, including on their oversight, in accordance with Human Rights Council resolution 10/15.

13. In May 2009 the Special Rapporteur provided input into the first four basic technical reference guides addressing the following subjects: conformity of national counter-terrorism legislation with international human rights law; proscription of organizations; stopping and searching of persons; and designing security infrastructure being developed by the Task Force working group.

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[4] E/CN.4/1998/45.

14. On 28 May 2009 the Special Rapporteur was in London and met with the Legal Adviser of the Foreign Commonwealth Office and officials from the Ministry of Justice and the Home Office as part of an ongoing dialogue regarding the role of United Kingdom intelligence agencies in counter-terrorism work, in follow-up to the Special Rapporteur's thematic report considered at the tenth session of the Human Rights Council.

15. On 4 June 2009 the Special Rapporteur met with the Ambassador of Cuba stationed in Helsinki, explaining his mandate and ongoing work.

16. From 29 June to 3 July 2009 the Special Rapporteur attended the sixteenth session of the annual meeting of special procedures. He also met with the Permanent Missions to the United Nations of Egypt, Tunisia and the United States of America.

17. On 1 and 2 July 2009 the Special Rapporteur, along with the other mandates involved, participated in informal consultations regarding a global joint study on secret detention, which is expected to be presented to the Human Rights Council at its thirteenth session.

III. A gender perspective on countering terrorism

A. Background

18. In December 2007, the Human Rights Council renewed the mandate of the Special Rapporteur and requested that the Special Rapporteur, inter alia, "integrate a gender perspective throughout the work of his/her mandate".[5] Previous reports of the Special Rapporteur have drawn attention to adverse gender-based human rights impacts of counter-terrorism measures, including the extent to which checkpoint delays have increased the risks of childbirth for Palestinian women;[6] the disproportionate impact of displacement and eviction on women in Colombia;[7] the economic, social and cultural rights impacts of counter-terrorism measures on Chechnyan women;[8] the impact of restrictive asylum procedures on returnee households, including those with a female caretaker;[9] and the security and integrity risks that ensue when counter-terrorism measures target women, including pregnant women, as potential suicide bombers.[10] Other reports of the Special Rapporteur have drawn attention to the role of women as potential terrorists[11] and the importance of securing women's rights and paying attention to gender issues to prevent terrorism.[12]

19. This report expands upon earlier reports of the Special Rapporteur to provide a comprehensive overview of the frequency and nature of gender-based human rights abuses in counter-terrorism measures and to explore the complex relationship between gender equality and countering terrorism. It is important to emphasize that

[5] Human Rights Council resolution 6/28, para. 2 (c).
[6] A/HRC/6/17, para. 38.
[7] Ibid., paras. 62-63.
[8] Ibid., para. 21 (referencing E/CN.4/2006/61/Add.2, paras. 70-80).
[9] A/62/263, para. 75.
[10] A/HRC/4/26, para. 92.
[11] Ibid., para. 72.
[12] A/HRC/6/17, para. 73 (c).

the gender perspective of counter-terrorism measures is severely underreported and often disregarded to the detriment of human rights enjoyment. This report seeks to reverse this trend but emphasizes that more is required to ensure that the voices of those affected by the gendered impacts of counter-terrorism measures are heard and the full range of human rights violations are acknowledged and addressed.

B. Gender, equality and non-discrimination in international human rights law

20. Gender is not synonymous with women but rather encompasses the social constructions that underlie how women's and men's roles, functions and responsibilities, including in relation to sexual orientation and gender identity,[13] are defined and understood.[14] This report will therefore identify the gendered impact of counter-terrorism measures both on women and men, as well as the rights of persons of diverse sexual orientations and gender identities. As a social construct, gender is also informed by, and intersects with, various other means by which roles, functions and responsibilities are perceived and practiced, such as race, ethnicity, culture, religion and class. Consequently, gender is not static; it is changeable over time and across contexts.[15] Understanding gender as a social and shifting construct rather than as a biological and fixed category is important because it helps to identify the complex and inter-related gender-based human rights violations caused by counter-terrorism measures; to understand the underlying causes of these violations; and to design strategies for countering terrorism that are truly non-discriminatory and inclusive of all actors.

21. International human rights law, including the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, requires States to ensure non-discrimination and equality (de jure and de facto) on the basis of gender, sex, sexual orientation and gender identity,[16] as well as to address instances where gender inequality intersects with other prohibited grounds of discrimination, such as race, colour and religion.[17] These guarantees of non-discrimination and gender equality are particularly integral to ensuring the enjoyment of economic, social and cultural rights,[18] which are often adversely

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[13] See HCR/GIP/02/01.

[14] A/59/38 (Supp.), annex I.

[15] See *Gender Mainstreaming: Strategy for Promoting Gender Equality* (Office of the Special Adviser to the Secretary-General on Gender Issues and Advancement of Women, August 2001).

[16] See Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180, annex I, arts. 2 and 3); International Covenant on Economic, Social and Cultural Rights (General Assembly resolution 2200A (XXI), annex I, arts. 2 and 3); International Covenant on Civil and Political Rights (A/63/16); Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 32 (E/C.12/GC/20) (noting that "Other status" as recognized in article 2, paragraph 2, includes sexual orientation and that gender identity is recognized as among the prohibited grounds of discrimination); Organization of American States AG/RES/2504 (XXXIX-O/09); Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.

[17] See A/59/38 (Supp.), annex I, para. 12; E/C.12/2005/4; Committee on the Elimination of Racial Discrimination (A/55/18, annex V).

[18] See E/C.12/GC/20, para. 2.

impacted by counter-terrorism measures.[19] In the light of the extent to which counter-terrorism measures curtail the claims of asylum-seekers, it is also important to note that international refugee law provides protection against gender-related persecution, including through refugee claims relating to sexual orientation and gender identity, within the context of article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees.[20]

22. In the field of gender and human rights, it is particularly important to recall that under international law the State is obliged to prevent, investigate and punish human rights violations by both State and non-State actors. In this respect there is a basic synergy in using a gender lens to ensure human rights while countering terrorism; both perspectives underscore that rights must be protected from violation by all actors, including terrorist groups.[21] The Special Rapporteur notes that it is often the case that Governments neglect the obligation to address gender-based violence by non-State actors,[22] and observes with grave concern the extent to which terrorist groups commit significant gender-based abuses, which may in their effects be similar to human rights violations committed by the State. However, consistent with the mandate of the Special Rapporteur, the focus of this report is on the gendered impact of States' counter-terrorism measures upon the promotion and protection of human rights and fundamental freedoms.

C. Gendered targeting and militarization

23. Those subject to gender-based abuses are often caught between targeting by terrorist groups and the State's counter-terrorism measures that may fail to prevent, investigate, prosecute or punish these acts and may also perpetrate new human rights violations with impunity. This squeezing effect is present for example, in Algeria, where women have been arrested and detained as potential terrorists after they report sexual violence and humiliation by armed Islamists.[23] In Nepal, the counter-insurgency campaign that was defined with reference to terrorism was characterized by attacks on *meti* (effeminate males or transgender persons) by both sides, with reports that the Maoists were abducting *meti*[24] and the police were taking advantage of the counter-terrorism environment to attack *meti* as part of a "cleansing" of Nepali society.[25] A recent report by Amnesty International exemplifies the extent to which women may be targeted by all entities, noting that in Iraq, "crimes specifically aimed at women and girls, including rape, have been committed by members of Islamist armed groups, militias, Iraqi government forces, foreign soldiers within the US-led Multinational Force, and staff of foreign private military security contractors. Most of these crimes have been committed with

[19] See A/HRC/6/17.

[20] See UNHCR Guidance Note on Refugee Claims Relating to Sexual Orientation and Gender Identity (Office of the United Nations High Commissioner for Refugees (November 2008)); HRC/GIP/02/01.

[21] See Karima Bennoune, "Terror/Torture", Berkeley Journal of International Law, vol. 26 (2008).

[22] See E/CN.4/2006/61.

[23] A/HRC/7/6/Add.2.

[24] United Nations Children's Fund, *Situation of Children and Women in Nepal* (Aug. 2007).

[25] Human Rights Watch, *Nepal: Police Attack Transgender People* (17 April 2005); Human Rights Watch, *Nepal: "Sexual Cleansing" Drive Continues* (16 March 2006).

impunity".[26] The gender dimensions of these abuses are explicit: "Women and girls are being attacked in the street by men with different political agendas but who all want to impose veiling, gender segregation and discrimination".[27] When States fail to prevent, investigate and punish gender-based violence by government actors or terrorist groups they embolden such attacks and legitimatize gender inequality.

24. These abuses on the basis of gender are amplified through war rhetoric (such as with the "war on terror") and increased militarization in countering terrorism. It is well documented that utilizing conflict or war rhetoric serves to stereotype, marginalize and profile those who challenge or fall outside the boundaries of predetermined gender roles, including women's human rights defenders.[28] In addition, the privileging of a militarized response to terrorism has meant that funds to combat terrorism have been diverted from addressing the socio-economic conditions that may be conducive to terrorism,[29] such as those involving gender inequalities.

25. Militarized internal conflicts (e.g., in Colombia, Sri Lanka, the Philippines and Nepal) that utilize a counter-terrorism framework also disproportionately impact women and children, who, for example, constitute the vast majority of the internally displaced.[30] In this respect, the Special Rapporteur reiterates that measures framed with reference to counter-terrorism have had significant economic, social and cultural rights impacts on women. For example, evictions and house demolitions used to target or collectively punish communities and other measures that have lead to displacement, have deprived women of basic necessities, including adequate food, access to health services and education.[31] Additionally, the Special Rapporteur reiterates that in countries like Iraq and Afghanistan, military action, armed insurgency and terrorist acts have created a security situation that hampers the delivery of even the most basic humanitarian assistance,[32] with particularly detrimental effects for the enjoyment of human rights by women.[33] The situation of women in Iraq discussed above also demonstrates the dangers present when private contractors are used in armed operations carried out in the context of countering insurgencies or terrorism; these risks are also evidenced by the role of private contractors in unlawful gender-specific interrogation techniques and trafficking (see sections K and M of the present report).

26. Rightly, the Security Council has identified gender-based violence, particularly sexual violence, in armed conflict and humanitarian crisis as a major concern for the international community through resolutions 1820 (2008), 1674 (2006), 1539 (2004), 1460 (2003), 1325 (2000) and on other occasions. Most recently, in resolution 1820 (2008), the Security Council stressed that sexual violence, when used or

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[26] Amnesty International, *Trapped by Violence — Women in Iraq*, 3, AI Index MDE 14/005/2009 (March 2009).

[27] Ibid.

[28] See Asia Pacific Forum on Women, Law and Development, "Claiming Rights, Claiming Justice: A Guidebook on Women Human Rights Defenders" (2007).

[29] Cyril I Obi, "Terrorism in West Africa: Real, Emerging or Imagined Threats?", African Security Review 15.3, 89 (2006).

[30] A/HRC/6/17, para. 62 (in relation to Colombia).

[31] Ibid., paras. 62-63.

[32] Ibid., para. 47.

[33] See Women for Women International, "Stronger Women Stronger Nations: 2008 Iraq Report, Amplifying the Voices of Women in Iraq", 16-27 (March 2008).

commissioned as a tactic of war in order to deliberately target civilians or as a part of a widespread or systematic attack against civilian populations, can significantly exacerbate situations of armed conflict and may impede the restoration of international peace and security. In the light of all of the above, the Special Rapporteur supports the conclusion of the International Commission of Jurists Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights, that the use of a "war paradigm" to counter terrorism has undermined human rights and should be abandoned.[34]

D. Gender and overly broad definitions of terrorism

27. The breadth of Governments' counter-terrorism measures have resulted in significant gender-based human rights violations. In many instances, Governments have used vague and broad definitions of "terrorism" to punish those who do not conform to traditional gender roles and to suppress social movements that seek gender equality in the protection of human rights. For example, Governments have alleged terrorism links to justify the arrest and persecution of "suspected 'homosexuals'"[35] and regularly accuse women's human rights defenders of being members of terrorist groups.[36] As well as being discriminatory, the latter criminalizes activities that are protected by the guarantees of freedom of opinion, expression and association in the International Covenant on Civil and Political Rights[37] and exposes women's human rights defenders to gender-specific forms of abuse and harassment at the hands of government.[38]

28. The Special Rapporteur is also concerned that the use of counter-terrorism laws to suppress indigenous groups' claims for economic, social and cultural rights has particular adverse impacts for women within those communities.[39] In the Philippines, for example, the militarization associated with counter-terrorism measures has exposed women to rape and sexual assault by the armed forces;[40] caused forced separation of women from their families because they are accused of New Peoples' Army membership; and involved arbitrary killings of indigenous women leaders.[41] This and the above examples demonstrate the extensive human rights violations that ensue when Governments apply counter-terrorism measures and laws to activities that do not constitute terrorism.

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[34] See International Commission of Jurists, "Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights" (2009).

[35] Women Living Under Muslim Laws, "Egypt: Trial of 52 men jailed because of their alleged sexual orientation continues" (23 October 2001).

[36] Megan Cossey, "Female Asian Activists Feel Singled Out for Attack", Women's eNews (4 December 2006).

[37] A/62/263 para. 66.

[38] Megan Cossey, "Female Asian Activists Feel Singled Out for Attack", Women's eNews (4 December 2006).

[39] See Counter-Terrorism Implementation Task Force working group on protecting human rights while countering terrorism, "Expert seminar on 'The Impact of Terrorism and Counter-terrorism Measures on the Enjoyment of Economic, Social and Cultural Rights (ESCR)'" (5-7 November 2008), para. 29 (2009).

[40] See E/CN.4/2003/90/Add.3.

[41] See "Conference highlights of the second Asian Indigenous Women's Conference" (4-8 March 2004).

29. Broad definitions of offences related to terrorism, such as those that criminalize material support and association with terrorists,[42] may also have wrongful gender-based impacts. Such laws, combined with an approach to intelligence-gathering based on "mapping of networks of contacts"[43] mean that family members of alleged terrorists, including wives,[44] can be swept up in counter-terrorism operations without adequate safeguards for their human rights. The Special Rapporteur reiterates that any law proscribing terrorism or related offences must comply with the requirement of legality and the judicial guarantees set out, particularly, in the International Covenant on Civil and Political Rights.[45]

E. Gender and collateral impacts of counter-terrorism measures

30. Counter-terrorism measures have had impermissible gendered collateral effects that are often neither acknowledged nor compensated.[46] Indeed, enforced disappearances of male detainees in the name of countering terrorism have had "special resonance"[47] for female family members, who bear the burden of anxiety, harassment, social exclusion and economic hardship occasioned by the loss of the male breadwinner.[48] Similar effects ensue from the prolonged detention without trial of male family members,[49] the practice of extraordinary rendition,[50] and forced deportations of male family members, undermining the enjoyment of economic, social and cultural rights, such as the right to adequate housing,[51] and the right to family life.

31. The Special Rapporteur is also concerned that women (and children) not suspected of terrorism-related offences are unlawfully detained and ill-treated to either gain information about male family members[52] or to compel male terrorism

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[42] International Commission of Jurists, "Assessing Damage, Urging Action: Report of the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights" (2009).

[43] Human Rights Watch, *Preempting Justice: Counterterrorism Laws and Procedures in France* (July 2008).

[44] See, e.g., "Police Quiz 7 July Bomber's Widow", BBC News, 9 May 2007; Andrew Norfolk and Sean O'Neil, "Bomber's Widow is Held in Anti-terror Raid", *The Times*, 10 May 2007; Josie Clarke and Caroline Gammell, "Lawyer for Bomber's Widow Condemns Police", *The Independent*, 16 May 2007.

[45] See A/HRC/6/17/Add.2, para. 18.

[46] See Counter-Terrorism Implementation Task Force working group on protecting human rights while countering terrorism, "Expert seminar on 'The Impact of Terrorism and Counter-terrorism Measures on the Enjoyment of Economic, Social and Cultural Rights (ESCR)'" (5-7 November 2008), para. 28 (2009).

[47] See A/HRC/10/9.

[48] See, e.g., Amnesty International, *Pakistan: Human Rights Ignored in the "War on Terror"*, 59-61, AI Index ASA 33/036/2006 (September 2006); see A/HRC/716/Add.2, paras. 88-91.

[49] See Muslim Human Rights Forum, "Horn of Terror", 19-21(Al-Amin Kimathi and Altan Butt, eds., 2008).

[50] See Counter-Terrorism Implementation Task Force working group on protecting human rights while countering terrorism, "Expert seminar on 'The Impact of Terrorism and Counter-terrorism Measures on the Enjoyment of Economic, Social and Cultural Rights (ESCR)'" (5-7 November 2008), para. 28 (2009).

[51] Ibid.

[52] See Human Rights Watch, *Open Secret Illegal Detention and Torture by the Joint Anti-terrorism Task Force in Uganda*, 46 (April 2009).

suspects to provide information or confessions.[53] As well as being discriminatory, such collective sanctions directly impact other rights enshrined in the International Covenant on Civil and Political Rights, such as the right to liberty and security of person (art. 9) and the right to be treated with humanity (art. 10). Female family members of disappeared persons are exposed to similar risks to liberty and security because, as noted by the Working Group on Enforced or Involuntary Disappearances, "it is they who are most often at the forefront of the struggle to resolve the disappearances of members of their family, making them susceptible to intimidation, persecution and reprisals."[54]

F. Relationship between promoting gender equality and countering terrorism

32. While Governments are required to ensure the right to gender equality and non-discrimination as ends in themselves, a gender perspective is also integral to combating conditions conducive to the spread of terrorism. The United Nations Global Counter-Terrorism Strategy adopted by the General Assembly in its resolution 60/288 includes the following non-exhaustive list of conditions conducive to the spread of terrorism: "prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socio-economic marginalization and lack of good governance".

33. International human rights law, through instruments such as the Convention on the Elimination of All Forms of Discrimination against Women and guarantees of non-discrimination and equality between sexes in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Racial Discrimination, recognizes that problems of discrimination, political exclusion and socio-economic marginalization cannot be solved without a gender perspective. Similarly, to stop dehumanizing victims of terrorism, Governments should remedy the gender inequality that makes women and lesbian, gay, bisexual, transgender and intersex individuals the targets of terrorism (see sect. B above) and ensure that victims of terrorism receive support, including by repealing discriminatory barriers (e.g., unequal inheritance laws) that frustrate assistance. Additionally, in implementing reparations programmes for victims of terrorism, States should utilize the opportunity to ensure that reparations programmes actually further gender equality.[55]

34. The Special Rapporteur notes, however, that counter-terrorism strategies that link the fight against terrorism to the promotion of gender equality do not automatically result in de facto or substantive equality as required under international human rights law. For example, the United Kingdom anti-radicalization initiatives seeking to include Muslim women as counter-terrorism

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[53] See Amnesty International et al., *Off the Record: U.S. Responsibility for Enforced Disappearances in the "War on Terror"* (June 2007).

[54] See A/HRC/10/9, para. 455.

[55] Ruth Rubio-Marín, *The Gender of Reparations: Unsettling Sexual Hierarchies While Redressing Human Rights Violations* (Ruth Rubio-Marín ed., 2009).

agents on the basis of their position "at the heart not only of their communities but also of their families",[56] may reinforce stereotypical gender norms about roles of women within the family. Instead, participation should be grounded on principles of gender equality, recognizing the unique gendered impacts of both terrorism and counter-terrorism measures. Additionally, counter-terrorism measures that are characterized as being a fight for women's rights (such as the United States portrayal of its "war on terror" in Afghanistan in 2001)[57] should be closely scrutinized, to ensure that they are not misinformed by gender-cultural stereotypes and are actually responsive to the concerns of women and lesbian, gay, bisexual, transgender and intersex individuals in local contexts.

35. Indeed, such counter-terrorism strategies that portray human rights and gender equality as alien to local contexts may actually have the unintended consequence of silencing those working on gender issues within their own communities by aligning those voices with foreign influence or even those perceived to be the "enemy". This may also exacerbate the susceptibility these actors already have to attacks by local government and non-government actors under the guise of protecting "tradition" or "culture". Because both counter-terrorism and terrorism agendas co-opt discourses and debates over women's rights,[58] this marginalization of those voices who understand the realities of gender inequality on the ground — women, those working within feminist perspectives that are responsive to local contexts, and lesbian, gay, bisexual, transgender and intersex individuals — is a significant barrier to the full realization of human rights and should be reversed.

G. Bartering of rights to counter terrorism

36. It is of special concern to the Special Rapporteur that some Governments have used gender inequality to counter terrorism, employing the rights of women and lesbian, gay, bisexual, transgender and intersex individuals as a bartering tool to appease terrorist or extremist groups in ways that have furthered unequal gender relations and subjected such persons to increased violence. For instance, the Government of Somalia reportedly failed to enact measures enhancing women's rights for fear that it would alienate conservative forces.[59] Similarly, in February 2009, following the Pakistani army's failure to defeat an 18-month Talibani insurgency in the Swat Valley, Pakistan signed a peace accord with the militants agreeing to implement the Taliban's version of Islamic law in exchange for peace.[60] The Government then passed a measure in April 2009 for the implementation of this specific version of Islamic law in the region.[61] In the light of the Taliban's

[56] Government of the United Kingdom, "The Prevent Strategy: The Guide for Local Partners in England: Stopping people becoming or supporting terrorists and violent extremists" (May 2008).

[57] See Ratna Kapur, "Un-Veiling Women's Rights in the 'War on Terrorism'", *Duke Journal of Gender, Law and Policy* (2002).

[58] See A/HRC/4/34/Add.2.

[59] See Wondwosen Teshome and Jerusalem Negash, *The Anti-Terror War in Somalia: Somali Women's Multifaceted Role in Armed Conflict*, vol. 2 Österreichische Zeitschrift für Politikwissenschaft (OZP) [Austrian Journal of Political Science] (2008).

[60] See Declan Walsh, "Pakistan bows to demand for sharia law in Taliban-controlled Swat valley", *The Guardian*, 14 April 2009.

[61] Ibid.; Sabrina Tavernise, "Islamic Law Now Official for a Valley in Pakistan", *New York Times*, 15 April 2009; Qaiser Felix, "Swat Valley: President Zardari authorises Islamic law, Taliban rejoice", *Asia News*, 14 April 2009.

restrictive interpretation of Islamic law, these measures were criticized as a major setback for women's rights,[62] with immediate reports of women being beaten for attending markets unaccompanied, the destruction or closure of girls' schools,[63] and statements from the Taliban indicating that women will not be allowed to work or go to the markets.[64] In other contexts, Governments have failed to protect women from private actors who perpetuate violence against them for failure to wear particular attire, such as headscarves.[65] Similarly, in Egypt, Government targeting of lesbian, gay, bisexual, transgender and intersex individuals has been a way of shoring up religious legitimacy and signifying to opposition movements that the State is "the guardian of public virtue".[66] The bartering of human rights in the name of countering terrorism erroneously suggests that human rights are optional and is fundamentally inconsistent with the State's obligation to ensure human rights protections to all persons within its jurisdiction.

H. Gender-based profiling and discrimination

37. The Special Rapporteur is concerned that counter-terrorism measures use gender stereotypes as a proxy for profiling on the basis of race, national or ethnic origin or religion. For example, in Denmark, behavioural profiles of terrorism suspects identify the attitudes of individuals towards women and places of religious worship as a generalized ground for suspicion.[67] In police interrogations of terrorism suspects in France "men are asked their views on women's equality" and "[w]omen who wear a religious headdress are invariably asked why" they do.[68] Such terrorist-profiling practices are discriminatory because they equate gender inequality with persons of a certain race, national or ethnic origin or religion and predict that males from these groups are more likely to be terrorists.[69]

38. In many countries, such profiling and other measures may penalize particular forms of women's religious dress. It is troubling that counter-terrorism strategies prescribe the detention of women who wear headscarves;[70] utilize images of veiled women in anti-terrorism posters;[71] and otherwise restrict women's dress. For example, in 2007, the President of the Maldives introduced a range of measures to "combat Islamic extremism", including a "new dress code which outlaws women

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[62] See Zofeen Ebrahim, "Rights-Pakistan: Peace deal with Taliban setback for women", IPS News Agency (Karachi), 23 February 2009; Declan Walsh, "Outcry in Pakistan after video of a 17-year-old girl's flogging by the Taliban is shown on TV", *The Guardian*, 4 April 2009.

[63] See Declan Walsh, "Video of girl's flogging as Taliban hand out justice", *The Guardian*, 2 April 2009.

[64] See "Swat sharia deal worries Afghans", Al Jazeera, 15 April 2009.

[65] See Amnesty International, Trapped by Violence — Women in Iraq, 3, AI Index MDE 14/005/2009 (March 2009).

[66] See Hossam Bahgat, "Explaining Egypt's Targeting of Gays", *Middle East Report*, 23 July 2001.

[67] See Jakob Scharf, Director General of the Danish Security and Intelligence Service (PET), speech at the University of Copenhagen: Danish efforts against terrorism (11 September 2007).

[68] Human Rights Watch, *Pre-empting Justice: Counter-terrorism Laws and Procedures in France* (July 2008).

[69] See A/HRC/4/26, paras. 34-37.

[70] See E/CN.4/2006/61/Add.2, para. 56.

[71] See Vikram Dodd, "Muslim groups infuriated by anti-terrorism poster", *The Guardian*, 14 May 2004.

from being covered from head to toe".[72] The Special Rapporteur also underlines that European counter-terrorism strategies that emphasize societal integration may unfairly exclude Muslim women who wear a veil because their dress is automatically perceived as radical and incongruous with national values.[73]

39. Counter-terrorism measures based on gender stereotypes of persons of a particular ethnicity, national origin and/or religion stigmatize and marginalize those groups. Women, particularly those who wear visible religious dress, such as the hijab, may bear the brunt of this discrimination. In Canada, Muslim women are subject to the "triple jeopardy" of being a visible minority subject to gender and religious discrimination.[74] In the United Kingdom, Muslim women, particularly those wearing the hijab, have also been especially vulnerable to increased racism, discrimination, harassment and abuse in the wake of terrorist attacks.[75] The Special Rapporteur wishes to remind States of their obligations to ensure non-discrimination by both Government and private actors and reiterates that fostering tolerance and solidarity within a society are a means of avoiding conditions conducive to terrorism.[76]

I. Impacts of targeted sanctions and control orders

40. In previous reports, the Special Rapporteur has drawn attention to his concerns about the lack of human rights safeguards in the listing of terrorist entities and application of "control orders", particularly in the light of the burdens that such measures place on listed individuals or controlled persons.[77] These sanction regimes[78] and control orders also have both direct and indirect impacts on the human rights of third parties, particularly female family members. In the United Kingdom, control orders and sanctions directly impact women, who, for example may have their bank accounts separately monitored and experience limits on their normal family life through conditions such as those that restrict who can enter the family home.[79] The indirect impacts on women are numerous and include serious economic hardship, acute levels of mental and physical distress, and in some cases, family separation because of the immense psychological burden of the control order and sanctions on all family members.[80]

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[72] See "Maldives Militant Move Condemned", BBC News, 18 October 2007.

[73] See Katrin Bennhold, "A veil closes France's door to citizenship", *New York Times*, 19 July 2008.

[74] See Canadian Council of Muslim Women, "Muslim Women More Likely to Experience Discrimination than Other Canadian Women" (21 March 2005); Daood Hamdani, Canadian Council of Muslim Women, "Triple Jeopardy: Muslim Women's Experience of Discrimination" (March 2005).

[75] See Anja Rudiger, Refugee Council, "Prisoners of Terrorism? The impact of anti-terrorism measures on refugees and asylum seekers in Britain" (February 2007).

[76] See A/HRC/10/3/Add.2, para. 48.

[77] A/63/223, para. 42.

[78] Counter-Terrorism Implementation Task Force working group on protecting human rights while countering terrorism, expert seminar on "The Impact of Terrorism and Counter-terrorism Measures on the Enjoyment of Economic, Social and Cultural Rights (ESCR)", 5-7 November 2008, para. 20.

[79] See Dina Al Jnidi, "Life with a control order: a wife's story", *The Independent*, 3 July 2009; Victoria Brittain, "Besieged in Britain", *Race Class*, vol. 1 (2009); Victoria Brittain, "Mean and squalid measures", *The Guardian*, 24 April 2008.

[80] Brittain, "Besieged in Britain", *Race Class*, vol. 1.

41. As with other counter-terrorism measures that impact third parties (e.g., disappearances), women in these families often bear the weight of these stresses, jeopardizing numerous economic, social and cultural rights protected by the International Covenant on Economic, Social and Cultural Rights, including protection and assistance accorded to the family and to children and young persons (art. 10); the right to an adequate standard of living, including adequate food and housing (art. 11); the right to health (art. 12); and the right to education (arts. 13 and 14). Such measures also undermine the enjoyment of women's various civil and political rights guaranteed by the International Covenant on Civil and Political Rights, such as the protection against arbitrary or unlawful interference with the family and privacy (art. 17) and protection of the family (art. 23).

J. Terrorism financing laws and impacts on charities

42. The Special Rapporteur is also concerned that terrorism financing laws that restrict donations to non-profit organizations have particularly impacted organizations that promote gender equality, including women's rights organizations. The small-scale and grassroots nature of such organizations means that they present a greater "risk" to foreign donors who are increasingly choosing to fund a limited number of centralized, large-scale organizations for fear of having their charitable donations stigmatized as financing of, or material support to, terrorism.[81] At the same time, as divergent voices within their communities, it is precisely this foreign funding on which women's rights organizations may be particularly dependent to achieve their objectives.[82] The need to ensure accessible, safe and effective channels for donation to such organizations is particularly acute in situations of humanitarian crisis, which, as noted earlier, often have disproportionate impacts on women and girls.

43. Moreover, this interference with efforts by women's rights organizations to resolve conflicts, support victims of terrorism, advance the rule of law and human rights, and realize equality, political inclusion, and socio-economic empowerment may curb efforts that would effectively counter conditions conducive to terrorism. In this regard, the Special Rapporteur reiterates his emphasis on the need to ensure that there are humanitarian exemptions to sanctions, particularly the freezing of funds,[83] and notes that organizations that further gender equality may be among the non-profit organizations that reduce the appeal of terrorism by engaging in development measures that can counteract conditions conducive to recruitment to terrorism.[84]

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[81] See Jude Howell et al., "The Backlash against Civil Society in the Wake of the Long War on Terror" (London School of Economics, Civil Society Working Paper No. 26, 2006); see Nancy Billica, Urgent Action Fund, "Philanthropy and Post-9/11 Policy Five Years Out: Assessing the International Impacts of Counterterrorism Measures" (Emily Utz ed., 2006); The Global Nonprofit Information Network, "Counterrorism policies are suspicious of specific types of charities" (2008).

[82] See Jude Howell et al., "The Backlash against Civil Society in the Wake of the Long War on Terror" (London School of Economics, Civil Society Working Paper No. 26, 2006).

[83] See A/61/267, para. 41.

[84] Counter-Terrorism Implementation Task Force working group on tackling the financing of terrorism, Final Report, para. 64 (January 2009).

K. Gender-discriminatory interrogation techniques

44. Counter-terrorism laws and measures that sanction discriminatory interrogation techniques against male and female terrorism suspects are also often in clear violation of the international law prohibition on torture and cruel, inhuman or degrading treatment or punishment. Rape and other forms of gender-based violence are used in many cases as a form of torture against detained female terrorism suspects.[85] As part of its "war on terror", the United States and its private contractors have employed interrogation techniques on male Muslim detainees in Iraq and elsewhere aimed at exploiting perceived notions of male Muslim homophobia (e.g., forced piling of naked male detainees, rape, and forced homosexual acts with other detainees) and inducing feelings of emasculation in detainees (e.g., enforced nudity, forced wearing of women's underwear, smearing of fake menstrual blood on detainees).[86] In some instances, the U.S. Department of Defence has used female service members to administer some of these gendered techniques on male detainees in an effort to heighten the perceived degrading aspects of such abuse.[87]

45. The Special Rapporteur stresses that homophobia and gender-based discrimination can never be justified as legitimate tools in counter-terrorism. Additionally, techniques that seek to evoke feelings of emasculation in detainees or suspected terrorists may hinder the fight against terrorism by provoking hyper-masculine responses that include acceptance or advocacy of violence.

L. Women's role in terrorism and counter-terrorism activities

46. While women are victims of terrorism and counter-terrorism measures, they may also be volitional actors in both terrorist entities and counter-terrorism measures. The Special Rapporteur reiterates that ignoring women as potential terrorists undermines the ability of counter-terrorism measures to identify terrorism suspects[88] and may serve to promote the recruitment of female terrorists.[89] Additionally, the failure to gather empirical data on why women become members of particular organizations at particular times circumscribes the effectiveness of counter-terrorism measures aimed at their reintegration. For example, in the violence in Colombia (often characterized in reference to terrorism),[90] gender is critical to: understanding the recruitment of women and girls by the Revolutionary Armed Forces of Colombia (FARC) and other illegal armed actors;[91] their treatment

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[85] Human Rights Watch, *Collective Punishment: War Crimes and Crimes against Humanity in the Ogaden area of Ethiopia's Somali Region* (June 2008).

[86] See documents released to the American Civil Liberties Union pursuant to a Freedom of Information Act request, available at http://www.aclu.org/accountability/released.html; Center for Constitutional Rights, "Corporations and Torture in Prisons in Iraq: The Cases Against Titan/L-3 and CACI" International, Inc.

[87] See Associated Press, "Sex allegedly used to break Muslim prisoners", MSNBC, 27 January 2005.

[88] See A/HRC/4/26, para. 72.

[89] See Karla J. Cunningham, "Cross-Regional Trends in Female Terrorism", *Studies in Conflict and Terrorism* (2003).

[90] See A/HRC/6/17, para. 62.

[91] See Rachel Schmidt, "No Girls Allowed? Recruitment and Gender in Colombian Armed Groups", 6:10 *Focal Point* (2007), see also Inter-American Commission on Human Rights, *Violence and Discrimination against Women in the Armed Conflict in Colombia*, paras. 4, 87-95, OEA/Ser.L/V/II. Doc. 67 (18 October 2006).

within the organizations; and the particular reintegration challenges that the Government must meet to ensure that the cycle of violence is not repeated.[92] Reintegration schemes that rely solely on gender stereotypes of women as victims or that exclude women from benefits provided to male ex-combatants[93] are discriminatory and fail to stem terrorism.

47. It is important to appreciate that women have a role in the design and implementation of counter-terrorism measures, as well as to recognize their contributions in combating terrorism.[94] There are some examples of such inclusion, for example, the recruitment of women to join Yemen's elite counter-terrorism unit;[95] the holding of government hearings for women to share their experiences of terrorism and counter-terrorism;[96] and the appointment of women advisory groups.[97] However, by and large, the experience has mainly been one of exclusion and marginalization of women's voices or inclusion on the basis of gender stereotypes, as noted above in section F. As the Philippines Government has noted "Women who are affected by the war against terrorism are unable to make their concerns heard because they are preoccupied with surviving the hardships brought on by the war or are not adequately represented in fora and panels".[98] This marginalization is also true of women's human rights defenders who, as targets of groups using terrorism,[99] could be key stakeholders in the developments of rights-respecting strategies to end terrorism.[100]

M. Restrictive immigration controls, asylum procedures and trafficking

48. Counter-terrorism measures disproportionately affect women and transgender asylum-seekers, refugees and immigrants in specific ways. For example, enhanced immigration controls that focus attention on male bombers who may be dressing as females to avoid scrutiny[101] make transgender persons susceptible to increased harassment and suspicion.[102] Similarly, counter-terrorism measures that involve increased travel document security,[103] such as stricter procedures for issuing, changing and verifying identity documents, risk unduly penalizing transgender

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[92] See Alice O'Keeffe, "Jungle Fever", *The Guardian*, 24 August 2008; Jeremy McDermott, "Colombia's Female Fighting Force", BBC News, 4 January 2002.

[93] See María Villellas Ariño, "A gender view of Nepal's armed conflict and peace process", Nepal Monitor (1 October 2008).

[94] A/HRC/4/26/Add.2, para. 88.

[95] See "Yemeni women join counter-terrorism force to battle militants on frontlines", Reuters, 25 May 2007; Ginny Hill, "Yemeni Women Sign up to Fight Terror", BBC News, 2 April 2007.

[96] See United Kingdom Metropolitan Police Authority, "MPA — Listen to Women for a Different Perspective on Dealing with Terrorism" (6 October 2006).

[97] See Dominic Casciani, "Muslim women advise on extremism", BBC News, 23 January 2008.

[98] See CEDAW/C/PHI/5-6 (2 August 2004).

[99] See Amnesty International, Afghanistan: *The Challenges of Defending Women's Rights in Kandahar* (24 October 2006).

[100] See Margot Badran, *Women and Radicalization*, Danish Institute for International Studies Working Paper No. 2006/5 (January 2006).

[101] United States Department of Homeland Security, *DHS Advisory to Security Personnel, No Change in Threat Level* (4 September 2003).

[102] See generally Sylvia Rivera Law Project, "The impact of the war on terror on LGBTSTQ communities".

[103] See A/62/263, para. 37.

persons whose personal appearance and data are subject to change.[104] This jeopardizes the right of persons of diverse sexual orientations and gender identities to recognition before the law. In this regard, the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity identify that States must "ensure that procedures exist whereby all State-issued identity papers which indicate a person's gender/sex ... reflect the person's profound self-defined gender identity".[105]

49. The Special Rapporteur is concerned that increased travel restrictions have also involved the inclusion of entire families on "no-fly" lists,[106] which unduly penalizes family relationships and undermines the enjoyment of human rights such as the right to freedom of movement. Alongside these measures that restrict movement, the Special Rapporteur also notes that the counter-terrorism strategy of empowering law enforcement agencies to enforce immigration rules may also deter immigrant women experiencing abuse (such as domestic violence) from seeking police protection because they fear that they, or their family members, may be deported.[107]

50. In the name of countering terrorism, States have also denied international protection to asylum-seekers who have suffered gender-based abuse. For example, forced domestic service for actors considered to be terrorists has been understood to count as "material support" to terrorism, therefore barring successful asylum claims by women who have suffered this abuse.[108] The Special Rapporteur reiterates his concern that the threat of terrorism has been used to enact restrictive immigration and refugee law regimes,[109] violating human rights and refugee law guarantees that protect individuals from refoulement for gender-based persecution and require non-discrimination and equality in the enjoyment of human rights, such as the right to freedom of movement.

51. There is also a current trend in counter-terrorism measures to link the fight against terrorism to the fight against human trafficking, including, for example, through institutional arrangements that group the two in the same government unit.[110] It is often stated for example that human trafficking undermines national security because it finances terrorism and involves trafficking of individuals into terrorist activities or environments where they are susceptible to violent radicalization.[111] The Special Rapporteur is concerned that the identification of

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[104] See Sylvia Rivera Law Project, "The impact of the war on terror on LGBTSTQ communities".

[105] Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, principle 3.

[106] See Steven Edwards, "Khadr Linked Arar to al-Qaeda, FBI Testifies", National Post, 19 January 2009; International Civil Liberties Monitoring Group, "Creation of a No-Fly List in Canada" (2007).

[107] See Kathryn Fanlund, "Our Safety or Their Lives? Legislative Changes Impacting Immigration and the Risks Posed to Immigrant Women", *Wisconsin Journal of Law, Gender and Society* (2008).

[108] See Kara Beth Stein, "Female Refugees: Re-Victimized by the Material Support to Terrorism Bar", 38 *McGeorge Law Review* (2007).

[109] A/62/263, para. 78.

[110] See United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* (February 2009) (United Nations publication, Sales No. E.09.V.5).

[111] See "Human Trafficking Has Some Link with Terrorism: Ganguly", The Hindu, 7 December 2008; Paul Lewis, "Fears that Afghan Boys at Risk of Terror Grooming", *The Guardian*, 16 June 2007; Global Initiative to Fight Human Trafficking, *The Vienna Forum Report: a Way Forward to Combat Human Trafficking* (May 2008).

these interlinkages has been to the detriment of the human rights of trafficked persons, including women. The focus on terrorism and trafficking as related transnational crimes has de-prioritized a human rights approach to trafficking, suggesting that trafficked persons should be seen as a threat and with the result that services for trafficked victims have diminished.[112] Additionally, service provision has been hampered because of the difficulty advocates experience in securing assistance and resources from governments that are "preoccupied" with fighting terrorism.[113] There is also troubling evidence that counter-terrorism activities have actually heightened the trafficking in women and girls through the increased presence of military forces[114] and burgeoning insecurity and poverty (e.g., as in Iraq).[115] The increased use of private military companies in counter-terrorism measures is also of grave concern from a trafficking perspective.[116] Such egregious impacts require States to treat trafficking as a human rights issue that requires serious and separate attention, rather than fighting trafficking in the name of countering terrorism.

IV. Conclusions and recommendations

A. Conclusions

52. In accordance with his mandate defined by the Human Rights Council, the Special Rapporteur has integrated a gender perspective throughout his work. This report expands upon earlier reports of the Special Rapporteur to provide a comprehensive overview of the frequency and nature of gender-based human rights abuses in counter-terrorism measures and to explore the complex relationship between gender equality and countering terrorism. Gender is not synonymous with women, but rather it encompasses the social constructions that underlie how women's and men's roles, functions and responsibilities, including in relation to sexual orientation and gender identity, are defined and understood. While many of the dimensions of the theme of this report relate to the human rights of women, and violations thereof, gender-based violations of the human rights of male persons have also been addressed. Moreover, the human rights of lesbian, gay, bisexual, transgender and intersex individuals have required particular attention in the context of a human rights assessment of gender and counter-terrorism.

B. Recommendations

53. The Special Rapporteur submits the following recommendations to Member States:

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[112] See Nancy Billica, Urgent Action Fund, "Philanthropy and Post-9/11 Policy Five Years Out: Assessing the International Impacts of Counterterrorism Measures" (Emily Utz, ed., 2006).

[113] See Anthony M. DeStefano, "Meeting to Address Human Trafficking", Newsday, 23 April 2003.

[114] Connie de la Vega and Alyson Beck, "The Role of Military Demand in Trafficking and Sex Exploitation" (24 February 2006).

[115] UNHCR, UNICEF and World Food Programme, "Assessment of the Situation of Iraqi Refugees in Syria" (March 2006).

[116] Connie de la Vega and Alyson Beck, "The Role of Military Demand in Trafficking and Sex Exploitation" (24 February 2006).

(a) To enshrine the principles of gender-equality and non-discrimination in the design and implementation of all counter-terrorism measures, including addressing instances where gender inequality intersects with other prohibited grounds of discrimination and to combat conditions conducive to terrorism;

(b) To undertake all appropriate measures to investigate, document and monitor the gendered impacts of counter-terrorism measures on women and lesbian, gay, bisexual, transgender and intersex individuals, including in reporting to inter-governmental organizations;

(c) To end impunity for all direct and collateral gender-based human rights violations in the name of countering terrorism, including economic, social and cultural rights violations, and provide redress for victims, including through reparations schemes that are non-discriminatory and equality-enhancing and provide recognition for all forms of gendered harms, including for victims targeted on the basis of sexual orientation and gender identity;

(d) To ensure accountability for gender-based abuses by terrorist groups and recognize gender-sensitive reparation schemes for victims of terrorism to ensure gender equality and end the dehumanization of victims of terrorism, one of the recognized conditions conducive to terrorism;

(e) To ensure that counter-terrorism measures do not extend to target or impede activities that do not constitute terrorism, such as the exercise of the right to freedom of peaceful assembly and association by women's and lesbian, gay, bisexual, transgender and intersex human rights defenders;

(f) To abandon the use of a "war paradigm" when countering terrorism because of the adverse impacts it has on gender equality, as well as ensure that the privatization of counter-terrorism measures does not further impunity for gender-based human rights violations;

(g) To repeal all counter-terrorism measures that sanction the unlawful detention and ill-treatment of women and children to produce information concerning male family members suspected of terrorism;

(h) To guarantee the protection against arbitrary or unlawful interference with the family and privacy, including through ensuring that any laws that criminalize material support and association with terrorists, or provide for the application of "control orders", comply with the requirements of legality and judicial guarantees;

(i) To recognize and compensate the human rights violations, including of economic, social and cultural rights, of family members of those individuals who have been disappeared, or subjected to "extraordinary rendition" or to prolonged detention in the name of countering terrorism;

(j) To renounce the use of gender stereotypes as a proxy for profiling on the basis of race, national or ethnic origin or religion and promote human rights education and training to reduce the stigma, harassment and discrimination faced by women because of profiling practices;

(k) To ensure that sanctions regimes incorporate humanitarian exemptions and that terrorism financing laws allow for accessible, safe and effective channels

for funding, particularly for humanitarian aid, of organizations devoted to gender equality;

(l) To take all necessary legislative, administrative and other measures to prevent, investigate and punish the use of torture and cruel, inhuman or degrading treatment or punishment in the name of countering terrorism, perpetrated on the basis of the sexual orientation or gender identity of the victim;

(m) To ensure that the rights of women and persons of diverse sexual orientations and gender identities are never used as a bartering tool to appease terrorist or extremist groups;

(n) To guarantee the right to protection from all forms of exploitation, sale and trafficking of persons by separating counter-terrorism measures from anti-trafficking initiatives to ensure that trafficked persons are neither criminalized nor stigmatized, and their human rights are ensured;

(o) To repeal restrictive immigration controls and asylum procedures that violate the human rights, including the right to freedom of movement, of transgendered persons and immigrant and migrant women;

(p) To guarantee the right to asylum for those owed international protection because of gender-based persecution, including through ensuring that broad "material support" laws are not used to penalize individuals who have suffered gender-based abuses by terrorist groups;

(q) To recognize the role of women and lesbian, gay, bisexual, transgender and intersex individuals as stakeholders and the benefit of including contextual feminist perspectives in the design and implementation of counter-terrorism measures and in combating terrorism, as well as the role of men in ensuring gender equality.

54. The Special Rapporteur submits the following recommendations to United Nations bodies:

(a) All relevant special procedures and other mechanisms of the Human Rights Council and human rights treaty bodies should integrate attention to gender and counter-terrorism into the implementation of their respective mandates;

(b) In particular, the Committee on the Elimination of Discrimination against Women should incorporate the specific question of the impact of counter-terrorism on women in its examination of State reports and when formulating concluding observations and general comments;

(c) The Counter-Terrorism Committee, the Counter-Terrorism Committee Executive Directorate and the Counter-Terrorism Implementation Task Force should take explicit account of gender as a relevant human rights concern in all of their activities;

(d) The Security Council and its subsidiary bodies should continue the process of reforming the regime for listing individuals and entities as terrorist ones, in order to secure full compliance with human rights in the imposition and implementation of the ensuing sanctions, and include a gender assessment in that review.